

IN THE UNITED STATES DISTRICT COURT FOR THE  
EASTERN DISTRICT OF OKLAHOMA

PATTI A. STOVER,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. CIV-07-352-KEW
	)	
MICHAEL J. ASTRUE,	)	
Commissioner of Social	)	
Security Administration,	)	
	)	
Defendant.	)	

OPINION AND ORDER

This matter comes before this Court on the Opposed Motion Under F.R.C.P. 60 to Extend Time to Request Attorney Fees Under 42 U.S.C. § 406(b) filed by Troutman & Troutman, Plaintiff's counsel, on July 29, 2010 (Docket Entry #23). Counsel requests an extension of time under Fed. R. Civ. P. 60 to file a motion for attorney's fees pursuant to 42 U.S.C. § 406(b) because they have not yet received a copy of the agency award upon which the request would be based. Counsel states that the attorney fee request could not be filed within the required 14 days after entry of judgment because the award had not yet been entered.

This Court sympathizes with counsel's quandary created by the unique procedure under Social Security law which does not neatly fit within the normal requirements of civil procedure. Clearly, counsel has employed the appropriate method for seeking and obtaining an extension under Fed. R. Civ. P. 60(b)(6). McGraw v. Barnhart, 450 F.3d 493, 505 (10th Cir. 2006). The timeliness in filing the motion for attorney fees will be gauged upon the standard of reasonableness, which certainly will encompass the time required to obtain a copy of the award.

While this Court agrees with Judge Shreder's statement that the Rule 60(b) request can be combined with the § 406(b) motion in most instances, the filing of a separate extension motion may be required in instances where a significant delay in obtaining the award occurs. As with most areas of the law, a hard and fast rule is not entirely possible and counsel will have to evaluate each case separately for their particular circumstance.

In this case, this Court entered judgment on March 30, 2009. Counsel has received notice of a favorable award, which became final on August 16, 2010. Counsel is on notice to be seeking the notice of award and should file their attorney fee motion under § 406(b) as soon as possible.

IT IS THEREFORE ORDERED that the Opposed Motion Under F.R.C.P. 60 to Extend Time to Request Attorney Fees Under 42 U.S.C. § 406(b) filed by Troutman & Troutman, Plaintiff's counsel, on July 29, 2010 (Docket Entry #23) is hereby **GRANTED**. Plaintiff's counsel shall file their motion for attorneys' fees under 42 U.S.C. § 406(b) within thirty (30) days of receipt of the notice of award. Counsel shall make every effort to obtain the award as soon as possible so that the delay is not considered unreasonable.

IT IS SO ORDERED this 30<sup>th</sup> day of September, 2010.

  
KIMBERLY E. WEST  
UNITED STATES MAGISTRATE JUDGE